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Via e-mail: e.walsh@fiegerlaw.com

Rebecca Walsh, Esq.
Fieger, Fieger, Kenney, Johnson & Giroux
19390 West Ten Mile Road
Southfield, Michigan 48075-2463

Re: William Ryan Smith, deceased

Dear Attorney Walsh:

I have reviewed the autopsy and toxicology reports, scene and autopsy photographs, Sterling Heights police reports, contemporary handwritten statements of witnesses, the October 31, 2007 typed statement of Janis L. Pitts, the video deposition testimonies of Officers Roeske, Bastianelli and Dwojakowski, and a one minute scene video clip that you sent to me relative to the death of William Smith.

According to the Sterling Heights police report, Mr. Smith, 15 years old, was chased by police after stealing a car about 9:15 p.m. on October 12, 2006. He crashed the car in a mobile home community. Three police officers state that they approached the car while he was still seated in it, shouted at him multiple times to "show your hands," when he suddenly turned toward them holding a gun in his right hand pointing it at them. All three then fired at him striking him fourteen times.

The internal police investigation concluded that “the officers exited their vehicles, produced their handguns and gave explicit instruction to ‘show your hands,’ at which time the suspect produced a weapon. All three officers immediately discharged their weapons...”

Officer Bastianelli testified that he ran toward the stopped car yelling loud commands to “show us your hands,” “see your hands” and heard other officers shouting commands. He saw that the driver was facing forward with his left hand on the steering wheel and that he then turned holding a gun in his right hand, pointed it at him and all three officers then fired together. Officer Bastianelli further testified that Officer Roeske was nearest to the car and he saw him strike the driver side front window with his baton in his left hand seconds before the driver turned and they then fired. According to Officer Bastianelli, his position was across from the middle of the driver’s door, Officer Roeske was near to the driver’s rearview mirror and Lt. Dwojakowski was behind the driver by the rear driver side window.

In the September 10, 2009 deposition of Lt. Dale Dwojakowski, he states that he thought he was the first officer to reach the stolen car, that he approached the front driver side window from behind and that he could see that the driver was facing forward with both of his hands “clenched onto the steering wheel.” The car windows were shut and the engine was running. He claims that he screamed at the driver at the top of his voice to “put up your hands,” “show me your hands,” “show me your fucking

hands” repeatedly while his hands were still holding onto the steering wheel. He heard no one else shouting verbal commands.

Lt. Dwojakowski testified that he was concentrating on watching the driver’s hands, standing behind him, with his gun pointed at his body. Suddenly he saw the driver spin around toward him, moving his left shoulder against the back of his car seat, rotating his torso to face the driver’s side window, and he then saw that the driver had a gun in his right hand pointed at him. Although he had been focusing on Mr. Smith’s hands, he hadn’t seen him reach for or get the weapon. He hadn’t seen Officer Roeske strike the driver’s side window until he saw a video after the shooting. Lt. Dwojakowski concluded that he had discharged his weapon less than two seconds after Officer Roeske struck the window.

The police canvassed the neighborhood for witnesses and found at least six who had heard the gunshot discharges but no one who had heard verbal commands given to the driver before the shooting. Ms. Janis Pitts specifically states that she saw gun muzzle flashes, saw and heard shots being fired and that the officers said nothing before firing. She further states that she could, from her mobile home, see a “young boy behind the wheel with his hands grasped tightly to the upper part of the steering wheel” when he was shot. “I saw the boys hands fall from the steering wheel and slump over into the passenger seat of the car.” She did not see him move to get a gun, hold a gun or turn toward the police. According to Lt. Dwojakowski’s testimony, the boy’s

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fingerprints were not present on the toy gun that he had found in the car and at least one fingerprint of another person was.

The autopsy identified fourteen gunshot wounds that struck Mr. Smith only on the left side of his arm, shoulder, torso and head. The trajectories of all fourteen bullet tracks are entirely consistent with Ms. Pitts' description that his hands were on the wheel and that he was facing forward, left side of his body toward the police, when he was shot. The trajectories are not consistent with police testimony that Mr. Smith was shot while he was turned to his left, facing the police, and holding a gun in his right hand pointed at a police officer behind him or at the side of the vehicle.

It is my opinion, to a reasonable degree of medical certainty, based on my training and my 45 years experience as a forensic pathologist and medical examiner, and on the materials in this matter that I have thus far reviewed, that Mr. Smith was facing forward and not turned toward the police pointing a gun at them when he was shot. It is also my opinion, on the basis of the wounds he received, that Mr. Smith was not injured when the car crashed, and that he experienced fright, pain and suffering after the crash while he was being shot at before he lost consciousness.

Yours very truly,

A handwritten signature in black ink that reads "Michael M. Baden". The signature is written in a cursive, flowing style.

Michael M. Baden, M.D.
Former Chief Medical Examiner,
City of New York

MMB:ph